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Lafayette Consolidated Government

Unified Development Code



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Article 6. Nonconformities

☞ *Purpose: Applying new regulations to existing development can create situations where existing lot dimensions, development density or intensity, land uses, buildings, structures, landscaping, parking areas, signs, or other conditions do not strictly comply with the new requirements. This Article protects and regulates nonconforming uses, buildings, structures, and lots (referred to collectively as “nonconformities”), and specifies the circumstances and conditions under which those nonconformities may continue. The City finds that nonconformities that adversely affect the orderly development and value of other property in the neighborhood or district should not continue unless restricted. At the same time, reinvestment in some properties that do not strictly comply with current regulations can maintain existing neighborhood assets and economic growth, and is allowed with appropriate conditions. For existing lots or development (including uses, buildings, structures, and signs) that are “legally nonconforming,” this Article sets out fair rules for whether, when, and how the regulations of this UDC apply.*

89-200 Applicability

(a) **Generally.** This article applies to –

- (1) A lawful nonconformity that exists as of the effective date of this Title, and
- (2) Any nonconformity created by an amendment to this Title, such as a change to an area’s zoning district classification.

(b) **Interpretation.** Nonconformities are inconsistent with the objectives of this Chapter, are viewed narrowly and have all doubts resolved against the continuation or expansion of the nonconformity in order to preserve the property rights of adjacent property owners.

(c) **Determination**

- (1) An applicant shall assert the existence of a nonconformity at the time an application under Article 4 is filed, or at the Administrator’s request. The failure to assert a nonconformity at the time of application or within the time period for appealing a determination by the Administrator as to the existence of a nonconformity waives the applicant’s right to assert it at a later point in time, unless an additional nonconformity is created after that time.
- (2) The Administrator shall determine the existence of the nonconforming use based on information provided by the property owner. The applicant or property owner has the burden of proving the existence of a nonconformity, and shall produce acceptable evidence attesting to the legal nonconforming status such as documents, rent receipts, affidavits, documentation of utility services, or other information deemed necessary in a particular case.

(d) **Unlawful Uses.** This Article does not authorize or legitimize uses, buildings, structures, parcels, or signs that were used, erected or maintained in violation of any previous zoning, subdivision or building regulation or otherwise not legally established or constructed. Those uses, buildings, structures, or signs are not “legally” nonconforming, but instead remain unlawful and subject to all requirements of this Chapter (including enforcement provisions) and any other applicable law.

89-93 Types of Nonconformities

There are 5 types of nonconformities addressed by this Article:

Nonconforming Use	See § 89-94
Nonconforming Lot	See § 89-95
Nonconforming Structure	See § 89-96
Nonconforming Site Improvement	See § 89-97
Projects in Process	See § 89-98

89-94 Nonconforming Use

(a) Applicability. This section applies to any nonconforming use. A “nonconforming use” means a lawfully established use that is not permitted in the zoning district. This applies where:

- the use is no longer allowed in the district, or
- the zoning district classification changes (either by applying a new classification to the area, or extending another zoning district to the area), and the new district does not allow the use, or

(b) Establishment and Scope. The use was established without conditions, and it would now require a conditional use permit or subject to new use regulations (see Article 5).

- (1) The casual, intermittent, temporary, or illegal use of land or buildings does not establish or maintain the existence of a nonconforming use.
- (2) A commercial or non-residential nonconforming use is continuous if –
 - a. it is opened for business at least 4 hours per day 5 days per week, and
 - b. the structure is maintained in accordance with the LCG Code or other state or federal laws or regulations.
- (3) The existence of a nonconforming use on part of a lot or tract does not establish a nonconforming use on the entire lot or tract.

(c) Displacement. No nonconforming use shall be extended to displace a conforming use.

(d) Change of Use

- (1) Once changed to a more restricted use or to a conforming use, no building or land shall revert to a nonconforming use.
- (2) If no structural alterations are made, a nonconforming use of a building may change to another nonconforming use of the same or more restricted classification.

(e) Relocation

- (1) For purposes of this subsection, “relocate” or “relocation” means to move a nonconforming use to occupy an area of land or a building that was not occupied on the effective date of this Chapter or any amendment that created the nonconformity
- (2) Nonconforming uses shall not relocate, except as provided in subsection (3) below.



- (3) The Planning and Zoning Commission may approve a conditional use permit to relocate a nonconforming use. In addition to the standards for approving a conditional use permit, following standards apply –
- a. The relocation shall either –
 1. Reduce the extent or intensity of the nonconformity, or
 2. Extinguish another nonconforming use of at least the same extent or intensity.
 - b. The relocation shall not occupy any open space or landscaped area that is required by this Chapter;
 - c. The relocation shall comply with the dimensional regulations, including setback and height regulations, of the zoning district in which the use is located;
 - d. The relocation shall not occupy any land beyond the boundaries of the property or lot as it existed on the effective date of this Chapter; or
 - e. Displace any conforming use in the same building or on the same parcel.

(f) Extension or Expansion

- (1) **Applicability.** This subsection applies to any extension or expansion of a nonconforming use, defined as follows:

Expansion (or “expand”)	An increase in the land area covered by the nonconforming use, except as provided in the definition of “extension” below.
Extension (or “extend”)	<p>An increase in square footage or volume of a nonconforming use.</p> <p>The following are not considered an extension or expansion of a nonconforming use if they do not increase the square footage or volume of the use:</p> <ul style="list-style-type: none"> • Attachment of signs that comply with requirements of this Chapter at the time of attachment, • Awnings, racks, balconies, or other projections from the building or structure that houses the use, • Display materials, • Lights, or • Similar extensions. <p>For purposes of this definition –</p> <ul style="list-style-type: none"> • “square footage” means the structure’s gross floor area as determined by the building code, and • “volume” means the volume of the structure that houses the use measured inside the exterior faces of all exterior walls.

- (2) **Where Allowed.** An extension or expansion of a nonconforming use is allowed if –

- a. Obtains a conditional use permit (see Article 4), and



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- a. This subsection applies to any nonconforming use that becomes vacant. For purposes of this subsection, “vacant” means that a building or land is not occupied or used in whole or in part, by a bona fide use or business.
- b. The intent to use a building or parcel for any nonconforming use is not considered in interpreting and construing the word "vacant" as used in subsection “a.” above.
- c. The owner of the building or land claiming retention of the nonconforming use has the burden of proof to establish the existence and retention of a nonconforming use by clear and convincing evidence.

- a. **Generally.** If the lessee of any building or place where a nonconforming use is established under a bona fide lease ceases to occupy or use the building for nonconforming purposes before the lease expires, the building or land is not considered vacant until the owner of the buildings or land regains legal control of its occupancy and use. This exemption does not apply if the lessor, for any reason, is entitled legally to regain possession and does not attempt to do so by legal means.
- b. **Proof of lease.** To prove the existence of a lease, the owner must provide the Administrator a copy of the lease before a certificate of occupancy is approved for the subject site. If an unwritten lease exists, the applicant must file a notarized affidavit on a form provided by the Administrator with the Administrator before a certificate of occupancy is approved for the subject site.

- (5) **Foreclosure.** Any building or land used for nonconforming commercial or industrial purposes that is subject to a recorded mortgage is not considered vacant after foreclosure proceedings are instituted until the mortgagee or purchaser, at a foreclosure sale, takes possession and ownership is established by court procedure or until the mortgagee gains possession of the property by a recorded legal transfer.

89-95 Nonconforming Lot

- (a) **Applicability.** This section applies to any nonconforming lot. A “nonconforming lot” means a lawfully platted or established lot that is below the required minimum lot size for the zoning district.
- (b) **Generally.** A legal nonconforming lot may be built upon if:
- (1) The lot is a lot of record; and
 - (2) The use is permitted in the district in which the lot is located;
 - (3) The lot meets the minimum frontage requirements of the zoning district. If the frontage requirements cannot be met, the lot shall comply with the access requirements of Article 3; and
 - (4) All yards or height standards are complied with, except that the Administrator may approve a reduction of required yards of up to 10% if it does not allow a building that is larger than a building permitted on a conforming lot in the district.
- (c) **Residential Zoning Districts.** A nonconforming lot that is a lot of record in a **residential** district may be used only for a single-family dwelling or public utilities.
- (d) **All Other Districts.** A nonconforming lot that is a lot of record in **any other district** may be used for any use allowed in the district, subject to all other applicable requirements of Articles 2 (Zoning) and 3 (Development Standards).

89-96 Nonconforming Structure

- (a) **Applicability.** This section applies to any nonconforming structure. A “nonconforming structure” means a lawfully established structure that does not conform to the zoning district regulations that govern size, setbacks, building height, or other dimensional requirements.
- (b) **Generally**
- (1) A nonconforming building may not be reconstructed or structurally altered except as provided in this section.
 - (2) Buildings used for neither commercial nor industrial purposes and are nonconforming only as to yard areas or density may be structurally altered and their building volume increased if the alteration or increase in building volume does not further encroach upon any required yard space or any required off-street parking area.
- (c) **Maintenance, Repairs and Alterations.** Routine maintenance of nonconforming structures is permitted, including necessary non-structural repairs, paint, and incidental alterations which do not extend or intensify the non-conformity.
- (d) **Alteration, Extension or Expansion.** A structural alteration, including an extension or expansion (as defined in § 89-94(f)(1)), of a nonconforming structure is allowed if it –
- (1) Does not increase the nonconformity, and



- (2) Does not involve or create a nonconforming use or nonconforming site improvement.
- (e) **Unsafe Structures.** Any nonconforming structure declared unsafe by a proper authority shall be restored to a safe condition.
- (f) **Variance.** Nonconforming structures may be made conforming with a variance (see Article 4).

89-97 Nonconforming Site Improvements

- (a) **Applicability.** This section applies to any nonconforming site improvement. A “nonconforming site improvement” means a lawfully established development that does not conform to the building design, infrastructure, landscaping, parking, site design, supplemental use regulations, or other regulations of Article 3 or 5 that would otherwise apply. Examples of nonconforming site improvements include:
- Landscaping (or lack of landscaping) that does not conform to the landscape area, location, or planting requirements.
 - Parking spaces, drive aisles, and loading areas that do not conform to the requirements of Article 3 in terms of their number or dimensions.
- (b) **Generally**
On lots with nonconforming site improvements, no additions to, or repairs or alterations of any structure or site improvement are allowed unless:
- (1) The nonconforming site improvements are brought into complete conformity with the regulations applicable to the area or zoning district, or
 - (2) The Administrator approves the activity as provided in subsection (c) below.
- (c) **Approved Nonconforming Site Improvements**
Administrator may approve additions, repairs or alterations to any structure or site improvement on a lot with a nonconforming site improvement if:
- (1) The nonconforming site improvement(s) will be the only nonconforming site improvements pertaining to the property.
 - (2) Compliance with the site improvement requirements applicable to the zoning district in which the property is located is not reasonably possible. Mere financial hardship does not constitute grounds for finding that compliance with the site improvement requirements is not reasonably possible.
 - (3) The property can be developed as proposed without any significant adverse impact on surrounding properties or the public health or safety.
 - (4) The owner has committed to other site design measures to reduce the negative impacts associated with the nonconformity.



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- (1) This subsection applies to any **Application in Progress**, defined as applications for zoning, building permit, or subdivision plat approval that were filed before this Chapter, or an amendment to this Chapter that affects the application, became effective.
- (2) **An Application in Progress is not considered legally nonconforming**, except as provided below. The application is subject to all applicable provisions of this Chapter when the application was filed and while it is being processed, unless otherwise provided in an ordinance amending this Chapter.
- (3) **Effect on Existing Building Permits.** Nothing in this UDC requires a change in plans, construction, or designated use of any building or structure for which a building permit was lawfully issued prior to the effective date of adoption or amendment of this Chapter, if construction was commenced and completed within the time period required by the building code. If the building code does not establish a time period for construction, construction must be commenced within 180 days and completed within 2 years after issuance of the building permit.
- (4) The development approval process usually requires a series of steps, and applications are subject to any conditions provided in an earlier step in the approval process as set out in Article 4. An approved application normally does not create a legal nonconformity or vested rights. However, in consideration of existing, good faith investments in project approvals, the LCG will continue to process existing applications as follows:

Type of Application		Conditions or Continuation
1	Annexation Boundary Adjustment Rezoning or Annexation Zoning Assignment Subdivision, Sketch Plan Text Amendment	An approved application is not considered legally nonconforming unless that applicant has obtained vested rights under Louisiana law, or to the extent provided in an enforceable development agreement (see LRSA Title 33, Chapter 14, Part G).
2	Subdivision, Preliminary Plat Subdivision, Final Plat Acceptance of improvements	<ul style="list-style-type: none"> Subdivision plat may proceed in accordance with subdivision regulations in effect at time of approval At time of building permit, all other regulations of this Chapter apply except for minimum lot size
3	Appeal-Planning and Zoning Commission decision Conditional Use Permit Variance (Zoning)	<ul style="list-style-type: none"> All development consistent with the decision is subject to the regulations in effect at the time of the appeal if a building permit or certificate of occupancy (if no building permit is required) is issued within 1 year of the final decision, and development timely proceeds pursuant to the building permit or certificate of occupancy. If the decision involves a preliminary or final plat, the 1-year period described above applies to the next stage of the platting process, or If development does not timely proceed as set out above, the rules in row 1 above apply.

- (1) A building legally under construction that does not comply with this Chapter becomes nonconforming when this Chapter or an amendment becomes effective.
- (2) The applicant shall apply for a determination that the building is a nonconforming use by using the procedures in Article 4 for Variances and Appeals to Board of Zoning Adjustment (BOZA)(§ 89-67). In lieu of the standards provided in § 89-67(f), the Board of Zoning Adjustment may approve the nonconforming use determination if it finds that the construction represents a substantial investment.

89-99 Destruction

- (a) **Applicability.** This section applies to any nonconforming use or structure that is destroyed by vandalism, fire, storms, or other acts of God or the public enemy.
- (b) **Continuation.** The nonconforming use or structure may be restored if the restoration is accomplished with –
- (1) no increase in building volume , and
 - (2) no increase in floor area over the building existing immediately prior to the damage.
- (c) **Registration**
- (1) The property owner shall file with the Administrator a registration indicating how the use or structure was destroyed and their intent to restore within 1 year of the destruction.
 - (2) Restoration shall be completed within 1 year from the date of the registration.
 - (3) The Administrator may approve up to 2 extensions for 1 year if the applicant files a request before the restoration period expires.

89-100 Nonconformity Created by Public Action

- (a) Any nonconforming structure or land expressly created or caused by a conveyance of privately owned land to a federal, state or local government to serve a public purpose is conforming for the purposes of this Chapter, and is not subject to the limitations of this Article.
- (b) The exemption in subsection (a) applies only to cases where private land is obtained by a governmental entity for a public purpose, through condemnation, threat of condemnation or otherwise, which creates a nonconformity in the remainder parcel in terms of setback, lot size, or other standards of this Chapter.
- (c) The exemption in subsection (a) does not apply to right-of-way dedication or other public conveyances of land required by the City in the course of subdivision or other routine development plan approvals.

89-101 to 89-119 Reserved

